

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
JAKE ANDROES,

Appellant,

v.

SPOKANE COUNTY AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 1015

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

An informal hearing upon the appeal of Jake Androes (Appellant) to a notice of civil penalty of \$25.00 for causing or allowing an outdoor fire came on before Board member W. A. Gissberg on July 1, 1976 in Spokane, Washington. Appellant appeared pro se; Respondent, Spokane County Air Pollution Control Authority, appeared by and through James P. Emacio, a Deputy Prosecuting Attorney.

Having heard the testimony or read the transcript and having considered the exceptions, and being fully advised, the Board makes the following

FINDINGS OF FACT

I

Respondent, pursuant to RCW 43.21B.260, has filed with this Board a certified copy of its Regulation 1, the contents of which are officially noted.

II

On April 5, 1976, Appellant being unaware of a requirement that he receive governmental permission to do so, ignited an agricultural open fire on his farm at Route 1, Box 19, Spokane County, Washington. The purpose of the fire was to rid a low ground area of a two-year accumulation of growth and obnoxious weeds in order to facilitate the movement of his farm equipment through it. The fire ultimately consumed one and one-half to two acres of area and a local fire district's equipment was called to the scene of the burn, as well as one of Respondent's enforcement officers.

III

Appellant's exceptions to the proposed Order again contend that the burned area was not more than an acre. The only sworn testimony on this subject was given under oath by Appellant at the hearing. He stated he did not "think that it was that big." (an acre and a half or two acres) TR 8; "It was possibly an acre, but I don't think it was bigger than that." TR 9; "I would say that it would be in the neighborhood of possibly an acre to an acre and a half. . . However, I don't believe it was two acres." TR 10; "it's possible that there could have been as much as an acre and a half." TR 11.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

IV

The Spokane County Air Pollution Control Authority issued its notice of violation and imposed a civil penalty of \$25.00 against Appellant citing a violation of Article VI, Section 6.01 of Respondent's Regulation 1.

V

Respondent's regulations and WAC 18-12-085 make it unlawful for any person to ignite a fire of the type and size here involved without a permit to do so. Appellant had no permit, although he did obtain one the day following the burn for which he was cited.

VI

Any Conclusion of Law hereinafter stated which may be deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact the Board comes to these

CONCLUSIONS OF LAW

I

When Respondent proved that Appellant had ignited an agricultural fire upon his property without a permit to do so, the burden shifted to Appellant to prove the fire was one acre or less in size (WAC 18-12-075). As shown by his testimony in Finding of Fact II, he failed to meet his burden of proof.

II

Appellant violated Respondent's Regulation 1 and WAC 18-12-085. Nonetheless, he contends that he should not be penalized because certain of his neighbors were burning without benefit of a permit.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

III

The unlawful actions of others do not legalize Appellant's violation of the law.

IV

The civil penalty of \$25.00 is a reasonable amount and should be upheld.

V

Any Finding of Fact which may be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board makes and enters this

ORDER

The civil penalty of \$25.00 is affirmed.

DONE at Lacey, Washington, this 19th day of August, 1976.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith
CHRIS SMITH, Chairman

Art Brown
ART BROWN, Member

W. A. Gissberg
W. A. GISSBERG, Member